

DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
BUREAU OF HUMAN RESOURCES

May 22, 2006

HUMAN RESOURCES MEMORANDUM 3-06

TO: Agency/Department Heads and Human Resource Representatives

SUBJECT: Paid Military Leave

A State employee who is a member of the National Guard or the Reserve components of the United States Armed Forces is entitled to up to 17 workdays per calendar year of *paid* military leave. This memorandum is intended to address situations where the rate of pay for *paid* military leave may vary according to when the 17 workdays is paid, particularly when merit increases and/or general increases occur during the calendar year.

The USERRA requires that the "escalator principle" (what may have occurred but for the employee's military service) be strictly adhered to in these matters. Hence, the following guidelines should be applied when State employee members of the NG/AFR become eligible for *paid* military leave:

- If an employee member of the NG/AFR elects to receive his or her paid military leave for attending drills, annual training, and/or other authorized military service through the year, the employee is paid at the rate in effect when the paid military leave occurs.

For example, an employee member of the NG/AFR (at Step 5 with Salary Review Date of 4/1), who receives a merit increase to Step 6 on 4/1, who receives a 3% general increase effective 7/1, and who regularly attends weekend drills and annual training may request and get paid as follows:

2 workdays at Step 5 for January Drill
2 workdays at Step 5 for February Drill
2 workdays at Step 5 for March Drill
2 workdays at Step 6 for April Drill (reflects merit increase 4/1)
2 workdays at Step 6 for May Drill
2 workdays at Step 6 for June Drill
2 workdays at new Step 6 for July Drill (reflects general increase 7/1)
Remaining 3 workdays at new Step 6 for August Annual Training or other authorized training activity;

OR

If so requested, the employee could be paid for all 17 workdays at new Step 6 for August Annual Training or other authorized military activity;

OR

Any combination of the above.

- If an employee member of the NG/AFR enters active military service, the employee may request and receive the 17 workdays paid military leave for the calendar year (or the balance of 17 workdays remaining for the calendar year) at *the rate in effect at the time the employee enters active military service.*

- If an employee member of the NG/AFR remains in military service into the next calendar year, the employee may request and receive the 17-workdays pay after January 1 at the rate of pay that would be in effect if the employee *had remained working*;

OR

The employee may request and receive the 17-workdays pay at some other time while in military service at the rate of pay that would be in effect if the employee *had remained working*;

OR

The employee may wait until returning from military service.

The last option, to receive the paid military leave benefit *after* returning from military service, presents a puzzling situation with respect to the appropriate *rate* of pay. That is, if the employee member of the NG/AFR waits to receive his/her *paid* military leave for *an extended period of military service*, the rate of pay may be dependent upon variable factors, such as merit increases and general increases that occurred during the period of absence for military service. In this case **the entire amount should be paid at the rate of pay that is in effect at the time that the payment is actually made**, which should be paid in the payroll that includes the date the employee returns to employment.

In a related matter, it is also important to ensure that the service member be properly credited with the appropriate amount of *vacation and sick time* for the 17-workdays that the employee is on *paid* military leave. A manual adjustment may have to be made if an employee is being paid retroactively for an extended period of military leave. For example, if an employee was on active military duty for part of 2004, all of 2005, and part of 2006, the employee would get credited with the appropriate amount of sick leave and vacation hours for *all periods of paid military leave* including, in this case, 2005.

Vacation time should be added at the accrual rate that would have been in effect had the employee been working.

This methodology is consistent with the principle that *paid* military leave be calculated *at the rate in effect at the time the payment is made* and it is consistent with the escalator principle required by the USERRA.

SI *Alicia Kellogg*

Alicia Kellogg, Director
Bureau of Human Resources

AK/pjs